IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 213 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

OTTO WAYENETH

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 09/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The Appellate Tribunal has referred following two questions to this Court under section 256(1) of the Income-tax Act, 1961 :-

(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the retention remuneration had not accrued or arisen to the assessee in India within the meaning of sec. 9(1)(ii) of the Income-tax Act, 1961 ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the living allowance did not form part of the salary of the assessee under section 7 of the Income-tax Act and, therefore, exempt from tax ?"

Question No.1 is answered in affirmative i.e. against the Revenue and in favour of the assessee following the decision in CIT v. S.G.Pgnatale (1980) 16 CTR (Guj.) 337 = (1980) 124 I.T.R. (Guj.) 391.

In view of our answer to Question no.1 as well as the decision rendered in CIT v. Otto Weyeneth, (1993) 112 CTR (Guj.) 234, Question no.2 is answered in negative i.e. in favour of the assessee and against the Revenue.

The Reference is disposed of accordingly, with no order as to costs.

(J.M.Panchal,J.)

(M.S.Shah, J.)

(patel)